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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,746	01/27/2004	Edward J. Plichta	CECOM 5443	1698

7590 12/04/2006

U.S. Army Communications-Electronics Command
ATTN: AMSEL-LG-L (Roger C. Phillips, Esq.)
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EXAMINER

DOVE, TRACY MAE

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/768,746

Applicant(s)

PLICHTA ET AL.

Examiner

Tracy Dove

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/27/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 1/27/04 has been considered by the examiner.

Claim Objections

Claim 7 is objected to because of the following informalities: the claim should be amended to recite "at least one material selected from the group consisting of", which is proper Markush group language. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the term "at least approximately", which is indefinite because it is unclear what the claims encompass. For example, 0.9 is "approximately" 1, but not "at least" 1. Examiner suggests "approximately" be deleted from the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Arai et al., US 6,475,680.

Arai teaches a lithium secondary battery comprising a positive electrode, a negative electrode, an electrolyte and a separator insulating the positive electrode from the negative electrode. The electrolyte may include a mixed solvent of ethylene carbonate, dimethyl carbonate and 1, 3-propylene carbonate (trimethylene carbonate) in a ratio of 45:45:10 by volume. A LiPF_6 electrolyte salt is dissolved in the mixed solvent. The electrolyte was poured into the battery contacting the anode, cathode and separator (15:22-54). The electrolyte is 10% by volume of 1,3-propylene carbonate (trimethylene carbonate) and 45% by volume of dimethyl carbonate. Table 1 teaches a solvent mixture including ethyl methyl carbonate (EMC) and 1,3-propylene carbonate in a ratio of 65:35 (example 9). Thus the claims are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arai et al., US 6,475,680.

Arai teaches a lithium secondary battery comprising a positive electrode, a negative electrode, an electrolyte and a separator insulating the positive electrode from the negative electrode. The electrolyte may include a mixed solvent of ethylene carbonate, dimethyl carbonate and 1, 3-propylene carbonate (trimethylene carbonate) in a ratio of 45:45:10 by

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volume. A LiPF_6 electrolyte salt is dissolved in the mixed solvent. The electrolyte was poured into the battery contacting the anode, cathode and separator (15:22-54). The electrolyte is 10% by volume of 1,3-propylene carbonate (trimethylene carbonate) and 45% by volume of dimethyl carbonate. Table 1 teaches a solvent mixture including ethyl methyl carbonate (EMC) and 1,3-propylene carbonate in a ratio of 65:35 (example 9).

Arai does not explicitly teach the solvent mixture includes a volume ratio of 1:1 trimethylene carbonate and dimethyl carbonate or the solvent mixture includes a volume percent of 50% trimethylene carbonate and 50% dimethyl carbonate. However, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because the courts have ruled where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Swain et al., 33 CCPA 1250, 156 F.2d 239, 70 USPQ 412. The courts have held that a limitation merely with respect to proportions in a composition of matter or process will not support patentability unless such limitation is "critical". Minerals Separation, Ltd. v. Hyde, 242 U.S. 261 (1916). Furthermore, the courts have ruled that discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). Furthermore, claims that differ from the prior art only by slightly different (non-overlapping) ranges are prima facie obvious without a showing that the claimed range achieves unexpected results relative to the prior art. See In re Woodruff, 16 USPQ2d 1935, 1937 (Fed. Cir. 1990). See also In re Huang, 40 USPQ2d 1685 (Fed. Cir. 1996) Claimed ranges of a result effective variable, which do not overlap the

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prior art ranges, are unpatentable unless they produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 29, 2006



TRACY DOVE
PRIMARY EXAMINER